

**MINUTES
of the
SECOND MEETING
of the
INDIAN AFFAIRS COMMITTEE**

July 7, 2004, Sanostee, New Mexico

July 8, 2004, Shiprock, New Mexico

July 9, 2004, Kirtland, New Mexico

The second meeting of the Indian Affairs Committee for the 2004 interim was called to order by Representative James Roger Madalena, co-chair, on Wednesday, July 7, 2004, at 10:58 a.m. in the Sanostee Chapter House, Sanostee, New Mexico. Representative Madalena asked Representative Ray Begaye to act as co-chair of the meetings in Sanostee and Shiprock.

PRESENT

Rep. James Roger Madalena, Co-Chair (7/7-8)
Sen. Leonard Tsosie, Co-Chair (7/8-9)
Sen. Rod Adair
Rep. Ray Begaye
Rep. Irvin Harrison (7/7-8)
Rep. Patricia A. Lundstrom
Sen. John Pinto
Sen. Lidio G. Rainaldi
Sen. Nancy Rodriguez (7/7)
Rep. Teresa A. Zanetti (7/8-9)

ABSENT

Sen. Raymond Kysar
Rep. Don Tripp
Rep. Avon W. Wilson

Advisory Members

Rep. Fred Luna (7/8)
Sen. Richard C. Martinez
Sen. William E. Sharer (7/9)

Sen. Ben D. Altamirano
Sen. Joseph J. Carraro
Rep. Ben Lujan
Rep. Debbie A. Rodella
Rep. Nick L. Salazar
Rep. James G. Taylor
Rep. W. C. "Dub" Williams

(Attendance dates are noted for members not present for the entire meeting.)

Staff

Leslie Schaar
Charles H. Van Gorder

Guests

The guest lists are in the meeting file.

Copies of all handouts and written testimony are in the meeting file.

Wednesday - July 7, 2004

I. Sanostee Chapter — Status Update — Emil Benally, Jr., chapter president; Jerry Bodie, chapter delegate to the Navajo Nation Council; Mae Rose Wolfe, chapter community services coordinator.

Chapter President Benally introduced the chapter to the committee by briefly describing its history, geography and population. He then reviewed problem areas being experienced by the chapter and its people, including a new chapter house, paving of roads, extending electrical service to those without running water, homelessness, native language instruction in the chapter's kindergarten through third grade school, a lack of telephone service, which adversely affects availability of emergency services, limited law enforcement and a lack of public restrooms. He noted that the chapter was working with the state on 13 different projects. He also indicated that a lack of water for the farmers within the community has given rise to a need for financial support for the possible construction of a dam.

Chapter Delegate Jerry Bodie noted that the Sanostee Chapter was geographically the largest chapter within the Shiprock Agency and had the second largest population. He described significant discrepancies between the census figures submitted by local enumerators and those published by the U.S. Census Bureau; these discrepancies have not been explained despite numerous inquiries on behalf of the chapter. Problem areas for the chapter noted by Mr. Bodie included inadequate housing, inability to obtain extensions of electrical and telephone service in remote areas, unpaved roads and related problems for school bus transportation, lack of school bus maintenance, deterioration of an elementary school building due to soil conditions and difficulty utilizing capital outlay appropriations due in part to requirements of the Navajo Nation.

Chapter Coordinator Wolfe discussed concerns of which she was aware, including a deteriorating multipurpose building (Veterans Memorial Building) and a senior center; a poor quality backhoe; lack of a post office, public safety building, medical facility and a place to store building materials; and a poor response time for law enforcement.

Following questions and discussion between chapter representatives and committee members, Senator Rainaldi suggested that it follow up with future meetings involving the state's congressional delegation, the Bureau of Indian Affairs (BIA), the Navajo Nation Capital Improvements Office and the Navajo Nation Council Transportation and Community Development Committee. Representative Lundstrum suggested that the Sanostee Chapter be utilized as a pilot project for improvements in the capital outlay process.

II. Capital Outlay Discussion — G. Michelle Brown-Yazzie, deputy secretary-designate, Indian Affairs Department (IAD); Robert Apodaca, director, Capital Projects Division, Department of Finance and Administration (DFA).

Deputy Secretary-Designate Brown-Yazzie introduced herself to the committee and summarized her background and experience prior to her recent appointment by Governor Richardson. She then went through a PowerPoint presentation that addressed the following issues: departmental staffing, problems regarding capital outlay projects administered by the department, the department's plan for improving the capital outlay process, working with tribes to create a 2005-09 Local Infrastructure Capital Improvement Plan, providing tribes with consistent technical assistance on an ongoing basis, establishing direct pay procedures and streamlining the joint powers agreement process. Ms. Brown-Yazzie also presented the IAD's Capital Outlay Projects Update.

Director Apodaca reviewed capital outlay projects that had been routed through the New Mexico Office of Indian Affairs. Since 1994, approximately \$27 million in capital projects had been appropriated, of which approximately \$13 million has not yet been spent. Mr. Apodaca then presented a PowerPoint presentation outlining the DFA's plans for managing capital projects, which include financial planning, priority setting, project management and monitoring and reporting. Mr. Apodaca also laid out the division's proposed capital outlay standards and the next steps to be taken in improving the capital planning process.

There was a wide-ranging discussion between the presenters and members of the committee regarding the capital outlay process and the status of past approved appropriations, which are now administered through the IAD. Issues raised by committee members included the necessity for joint powers agreements for every project, sub-area offices of the IAD, capital outlay training of tribal personnel and capital outlay staffing within the DFA.

During the course of those discussions, Representative Lundstrom moved that \$2 million be taken off the top of the total capital outlay amount in fiscal year 2005 for the purpose of providing professional services such as architectural and engineering services to help ensure the project readiness of the \$17+ million in approved capital outlay projects currently on the backlog list provided by the IAD. She noted that such assistance is critical to move the projects forward, and that the funds should go either to the IAD or the Capital Projects Division of the DFA. The motion was seconded by Representative Harrison and approved. Senator Rodriguez moved to recommend that the secretary of the IAD earmark specific back-logged capital outlay projects to specific IAD staff members for monitoring and follow-up, and that the secretary report back to the committee on the results of such follow-up efforts. The motion was seconded by Representative Lundstrom and approved.

Following the lunch break, Representative Begaye moved to approve the minutes of the Indian Affairs Committee meeting held on May 26, 2004. The motion was seconded by Senator Rodriguez and was passed unanimously.

III. Road Yard Project — Larry Maynard, district engineer, District VI, Department of Transportation (DOT); Fernando Trujillo, assistant district engineer, District VI, DOT; Lisa Vega, technical support engineer, District VI, DOT.

District Engineer Maynard presented background information regarding the so-called "Road Yard" project. The concept is to have the state and the Navajo Nation work together to develop shared highway maintenance storage yards. This would be an opportunity to share state resources with the Navajo Nation to permit the development of additional sites for the stockpiling of road maintenance materials and equipment, thereby permitting more timely maintenance operations. In 2003, the legislature appropriated \$600,000 toward the establishment of maintenance patrol yards and the purchase of equipment. A proposal has been presented to the Transportation Committee of the Navajo Nation and must now be presented to the Navajo Nation Council and the IAD. There is in place a memorandum of understanding between the DOT and the Navajo Nation providing for monthly meetings to implement this proposed project. The total requested funding for this project was originally \$4.1 million, of which \$600,000 has been appropriated. Follow-up questioning by committee members touched on the status of improvements to State Route 491 and the Jemez Pueblo highway bypass.

IV. Delivery of Rural Electric Service — Bruce Pritchard, supervisor, Engineering Department, Continental Divide Electric Cooperative; Eugene John, manager, Shiprock District Office, Navajo Tribal Utility Authority (NTUA); Elizabeth Washburn, NTUA; Sharon John, NTUA.

Mr. Pritchard began his presentation with a description of the service area of the Continental Divide Electric Cooperative, which serves approximately 7,220 square miles in west central New Mexico and approximately 24,810 meters. He then described the general process that needs to be followed to extend power lines in any given area, including the Eastern Agency of the Navajo Nation, the Ramah Chapter of the Navajo Nation and the Pueblos of Zuni, Acoma and Laguna. Mr. Pritchard then discussed an extensive list of problems facing those potential customers seeking an extension of electrical service in rural areas, including right-of-way acquisition, the BIA bureaucracy and compliance with the requirements of the National Environmental Protection Act, including environmental and archaeological surveys. Next Mr. Pritchard discussed with the committee his suggestions for improving the process to extend rural electrical service within Indian Country and solicited the committee's help in getting assistance from the state's congressional delegation to address these problems.

Eugene John, Elizabeth Washburn and Sharon John gave a PowerPoint presentation regarding the process by which a Navajo Nation chapter initiates a power line project with the NTUA. The process includes advance planning, a request for and performance of a feasibility study, timing, cost estimates, funding, right-of-way acquisition, house wiring, design of the main line and taps and construction.

V. Burnham Chapter — Status Update — Veronica M. Begay, chapter community services coordinator.

Chapter Coordinator Begay presented to the committee on behalf of the Burnham Chapter a list of "need areas", including the following: power line extensions, road improvements, water line extensions, water for livestock, improvement or new construction of homes and a new senior center, which has been approved but is not listed in approved projects for FY 2004.

Following the presentations by the Continental Divide Electrical Cooperative and the NTUA, Representative Begaye expressed to the representatives present from the Sanostee Chapter the committee's appreciation for the chapter's hospitality in hosting the committee meeting and providing the committee with lunch. At 4:45 p.m., the meeting was recessed until 9:30 a.m. the following day at the Shiprock Chapter.

Thursday, July 8, 2004

The recessed second meeting of the Indian Affairs Committee for the 2004 interim was called back to order by Representative Ray Begaye, acting co-chair, on Thursday, July 8, 2004, at 9:48 a.m. in the Shiprock Chapter House, Shiprock, New Mexico.

I. Shiprock Chapter — Status Update — Duane H. Yazzie, chapter president; Pete Ken Atcitty, chapter delegate to the Navajo Nation Council; Peter Deswood, Jr., chapter community service coordinator.

President Yazzie welcomed the committee to the Shiprock Chapter and briefed the committee regarding ongoing chapter activities. President Yazzie reviewed a listing of economic development projects. Many of the chapter's activities are focused on economic development, which has been on the upswing, but the focus is changing to community development rather than just economic development. The principal need of the chapter at this point is to update community infrastructure. Coordinator Deswood then reviewed development projects in the South Shiprock area. Council Delegate Atcitty identified two of his principal concerns: the need for additional law enforcement resources, including better coordination with the state police, and improvements to State Route 64 West where there have been right-of-way acquisition problems. The committee also heard from Mr. Romero Brown, who has experienced difficulty in getting support from the Economic Development Department for the development of a Days Inn/Denny's project to be located in Shiprock.

II. Navajo Uranium Radiation Victims Committee — Phillip Harrison, liaison, Navajo Uranium Radiation Victims Committee.

Phillip Harrison presented the committee with background information on the Radiation Exposure Compensation Act (RECA), including its original adoption by Congress in 1990 and subsequent amendment in 2000. He explained that there are problems with the legislation and that he has approached the state's congressional delegation regarding the need for another round of amendments to RECA. He has not yet received any response from the congressional delegation. Mr. Harrison explained that there appears to be a disproportionate number of Navajo

claimants who have not been granted compensation, and that the delegation in Washington, D.C., has not been helpful in rectifying this situation. There are currently 4,000 compensation claim cases filed in Shiprock, but there are only three caseworkers and only about 500 claims that have been approved. Mr. Harrison estimates that 5,000 claims still need to be filed. Following a discussion of the issues by committee members, including Representative Lundstrom, whose father suffered from radiation-related health problems, Senator Tsosie suggested that the committee draft a memorial on this topic requesting that Congress work to correct, as soon as possible, the problems regarding the implementation of RECA for Native Americans.

III. Aging and Elderly Care Issues — Michelle Lujan Grisham, secretary, Aging and Long-Term Services Department (ALTSD); Lynne Anker-Unnever, director, Division of Community Involvement Team, ALTSD; Ray Espinoza, director, Area Agencies on Aging, ALTSD; David Baldrige, executive director, National Indian Council on Aging; LaVerne Wyaco, director, Navajo Aging Services Department; Murlee Hollowhorn, director, Crownpoint Agency, Navajo Area Agency on Aging (NAAA).

Secretary Grisham introduced herself and the ALTSD staff who accompanied her to the meeting. She distributed to the committee copies of a monograph series dealing with Indian health issues and a notebook with statistical and program information regarding the NAAA and the Indian Area Agency on Aging (IAAA). Lynne Anker-Unnever and Ray Espinoza discussed ongoing activities with the NAAA and the IAAA, including capital outlay request training, implementation of a new financial reporting system, the new Twin Lakes Chapter Senior Center and the nature and extent of services provided to the elderly populations within the service areas of these two agencies. David Baldrige explained to the committee the development and application of Geographic Information System (GIS) mapping technology to the provision of services by the ALTSD. For example, by geographically mapping sectors of the population having specific age or health characteristics, better decisions can be made regarding where to site new facilities to serve that population. LaVerne Wyaco and Murlee Hollowhorn reviewed the services provided to the elderly populations in areas of the Navajo Nation.

During the subsequent discussion between the presenters and committee members, the following topics were discussed: delays in the expenditures of capital outlay appropriations; the siting of the new Twin Lakes Chapter Senior Center; the provision of traditional foods at senior centers; translation of committee discussions into traditional languages (Secretary Grisham indicated ALTSD would fund one-half the cost of a pilot project for instantaneous translation); the use of counties as fiscal agents for tribes in the capital outlay process; the lack of good cell phone service in rural areas; U.S. Postal Service facilities; employment of elders in education; statistics on Indian health problems; and urban Indian populations. Thomas Totachini, president of the Shiprock Senior Center, also commented on senior meals at the Shiprock Senior Center and the location of the Twin Lakes Senior Center. Sheri Watson, executive director of the San Juan Center for Independence, spoke regarding problems with the recent transition of care from that center to the Shiprock Senior Center. After a lengthy discussion, it was agreed that representatives of the center and ALTSD would get together outside of the committee meeting to air and resolve any problems related to that transition.

IV. Elsie Natai

The committee heard from Elsie Natai of the Red Rock Chapter, Navajo Nation. She has been trying for years, unsuccessfully, to get a power line extended 2.5 miles to her home. She explained to the committee how nothing has been done despite the fact that funds for the extension have been allocated and she requested the committee's help in getting the extension off the ground.

V. Proposed Hogback Bridge — Update — Robert C. Begay, president, San Juan Chapter, Navajo Nation; Armando Armendariz, bridge engineer, District V, DOT.

President Begay briefed the committee on the proposal to construct a bridge on Navajo Highway 368 over the San Juan River to connect that highway with State Highway 64. An initial report had been prepared in 1999 by Miller Engineering regarding the feasibility of the bridge. There had been a meeting with the BIA on June 3, 2004 to discuss this project, and a public hearing is scheduled for September 13. The total cost of the bridge is estimated at \$8 million, of which \$4.7 million has been committed by the BIA. Mr. Armendariz agreed with President Begay's description of the status of the project, and indicated that the state's involvement would be limited to the possible construction of an interchange, if warranted by traffic studies. Comments from the committee addressed insurance problems regarding the bridge and routing decisions. It was suggested that the committee may want to write a letter to Congress expressing its support for the proposed bridge.

VI. NMSU Agricultural Science Center (ASC) — Mick O'Neill, superintendent, assistant professor, NMSU ASC, Farmington.

Professor O'Neill explained to the committee the history of the NMSU ASC, which was established in Farmington in 1966. The center's purpose at the present time is applied agricultural research, and its primary client groups are the Navajo Agricultural Products Industry, small-scale Native American farmers, long-time area farmers and recently arrived urban immigrants. Current ASC research projects focus on crop improvement, weed control and irrigation/water management. Professor O'Neill then briefed the committee on the proposed enhancement initiative, which will include a nonrecurring capital outlay request in the amount of \$25,000 for a feasibility study and a recurring general fund request in the amount of \$360,000 per year. The initiative will provide for a horticulturalist and requisite support staff to be added to the ASC's staff. The horticulturalist will have teaching responsibilities at San Juan College and will fill a position at the ASC that was left vacant when the prior horticulturalist retired in 1992.

Jimmie BlueEyes, community services coordinator for the Upper Fruitland Chapter, Navajo Nation, commented upon the impact of the Navajo Indian Irrigation Project and the Navajo Agricultural Products Industry on small-scale subsistence farmers along the San Juan River. He and fellow farmers have received assistance and benefits as a result of the activities at the ASC.

Representative Begaye expressed to the representatives present from the Shiprock Chapter the committee's appreciation for the chapter's hospitality in hosting the committee meeting and providing the committee with lunch. The meeting was recessed at 5:15 p.m. until

9:00 a.m. the following day at the campus of San Juan College West in Kirtland, New Mexico.

Friday, July 9, 2004

The recessed second meeting of the Indian Affairs Committee for the 2004 interim was called back to order by Senator Leonard Tsosie, co-chair, on Friday, July 9, 2004, at 9:40 a.m. at the campus of San Juan College West in Kirtland, New Mexico.

I. Water Rights Issues — John D'Antonio, state engineer and secretary, Interstate Stream Commission; John Whipple, commissioner, Interstate Stream Commission; D. L. Sanders, general counsel, Office of the State Engineer; Jason John, hydrologist, Navajo Nation Department of Water Resources, Water Management Branch; George Arthur, chairman, Natural Resources Committee, Navajo Nation Council.

State Engineer John D'Antonio briefed the committee on the background and status of the proposed settlement of the *Aamodt* lawsuit regarding water rights. He distributed to the committee handouts, including a fact sheet on the proposed *Aamodt* settlement, questions and answers regarding a regional water system, water quality concerns, legal issues and hydrology, copies of which are in the meeting file. Mr. D'Antonio summarized the benefits of the proposed *Aamodt* as follows:

Benefits for the Pueblos in the Nambe, Pojoaque and Tesuque Stream Systems:

- 1) The proposed settlement agreement is intended to provide a regional water supply to the Pueblos of Nambe, Pojoaque, Tesuque and San Ildefonso in exchange for releasing claims to water that could otherwise potentially displace existing non-pueblo water users in the Rio Pojoaque Basin; and
- 2) The pueblos will have a secure water supply well into the twenty-first century.

Benefits for the State of New Mexico:

- 1) Water rights claims that have been languishing in court for decades will now be settled, ending the financial drain on state personnel and legal resources;
- 2) The proposed settlement agreement can be implemented within New Mexico's compact apportionment;
- 3) The proposed agreement will help Santa Fe County supply water to its residents; and
- 4) The proposed settlement recognizes existing and authorized uses of water within the rios Nambe, Pojoaque and Tesuque.

Benefits for Non-pueblo Water Users in the Nambe, Pojoaque and Tesuque Stream Systems:

- 1) Years of uncertainty with respect to rios Nambe, Pojoaque and Tesuque water rights will now be settled. Since the pueblos' water rights will be quantified, non-pueblo water users can better plan their futures;
- 2) Imported water will decrease pressures on the existing aquifer;
- 3) Economic development among non-pueblo water users can proceed with more certainty; and
- 4) Non-pueblo water users are free from the expense of state lawsuits associated with settling water rights claims.

Following Mr. D'Antonio's presentation, the discussion with committee members included the status of the United States as a party to the litigation, representation of parties by the U.S. Department of Justice, payment of initial hook-up fees, the doctrine of prior appropriation, Indian water rights and the impact of domestic wells on surface waters.

After the discussion of the proposed *Aamodt* settlement, Mr. D'Antonio addressed the issue of Navajo Nation water rights in the San Juan River Basin in New Mexico. He reviewed the background of the dispute and the status of the proposed settlement. The major components of the proposed settlement include: adjudicate reserved senior priority rights for existing acreage under the Fruitland and Hogback projects; recognize and complete the Navajo Indian Irrigation Project (NIIP) as authorized by Congress in 1962; authorize and construct the Navajo-Gallup Water Supply Project to service the domestic needs of the Navajo Nation and the City of Gallup through 2060; and settlement of Navajo claims with allocation of about 23,000 acre-feet per year of new water and construction of the Navajo-Gallup Water Supply Project at a cost of \$600+ million. Mr. D'Antonio distributed copies of the *Executive Summary of the San Juan River Basin in New Mexico - Navajo Nation Water Rights Settlement*. He also mentioned that the Interstate Stream Commission will hold a public hearing in August concerning the proposed settlement.

Jason John then presented a PowerPoint presentation giving background information on Navajo-claimed water rights and usage in the San Juan and Colorado River Basins. The presentation also described the elements of the proposed settlement, including projected costs and a time line for completion. Chairman Arthur commented that the proposed settlement had been approved by the Natural Resources Committee of the Navajo Nation Council, and that he would soon be presenting the settlement to the Navajo Nation Council for its approval. A follow-up discussion with committee members included questions and comments regarding the location and timing of the proposed Gallup water project, the Texas lawsuit concerning Pecos River water rights, a mechanism to cut off users of junior water rights, if necessary, and water banking. A motion was made by Representative Lundstrom to recognize the efforts of the parties in the San Juan River Basin dispute in working out the proposed settlement, including the Navajo Nation and the Office of the State Engineer. There was no second to the motion.

II. Civil Rights Issues — Michael Burrridge, chief of police, City of Farmington; Herb Frazier, bilingual education coordinator, Central Consolidated School District 22; Karen Dixon Blazer, consultant, Central Consolidated School District.

Chief Burrridge presented the committee with copies of the information that had been presented to the New Mexico Advisory Committee to the U.S. Commission on Civil Rights at the hearing conducted in Farmington on April 30, 2004. He then addressed questions from the committee on topics such as the ratio of arrests of Native Americans, the number of Native Americans on the Farmington police force, steps the department is taking to recruit Native American officers, the lack of any rights of Farmington police officers to act on tribal lands, recent trends in arrest records in Farmington, the composition and duties of the Farmington Citizen Police Advisory Committee and education of police officers in cultural sensitivity. Chief Burrridge indicated that he would make himself available to the committee in the future if it wants to further discuss these matters.

Mr. Frazier presented a PowerPoint presentation to the committee regarding the recently completed development of a curriculum for the teaching of the Dine language within the Central Consolidated School District 22. In follow-up questions by the committee, Mr. Frazier and other representatives of the district discussed the use of funds dedicated to native language teaching, the use of elders in teaching within the district's schools, the number of teachers actually employed to teach the Navajo language within the schools, the lack of any contract with Dine College and performance standards for the teaching of native languages.

Harry Descheenie, Jr., President of the Gadii ahi (Cudeii) Chapter, Navajo Nation, then addressed the committee to give it an update on the disagreements between the administration of Central Consolidated School District 22, the district's Indian Education Committee and citizens in support of teaching of the Navajo language in district schools.

III. Adjournment

Senator Tsosie adjourned the meeting at 2:40 p.m. The next meeting of the Indian Affairs Committee will be held on August 3-5 in the Albuquerque area.